

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DEC 14 2007

ANTHONY J. WRIGHT,

Petitioner,

vs.

LAWRENCE K. BAERMAN, Clerk
UTICA

9:03-CV-0806

JOSEPH SMITH, Superintendent,
Shawgunk Corr. Facility,

Respondent.

APPEARANCES:

OF COUNSEL:

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HON. ANDREW M. CUOMO
Attorney General of the State of New York
Attorney for Respondent
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ASHLYN H. DANIELLY, ESQ.
Asst. Attorney General

HON. DAVID N. HURD
United States District Judge

ORDER

Petitioner Anthony J. Wright ("Wright" or "petitioner") filed a petition for a writ of habeas corpus which was recommended denied and dismissed in the Report-Recommendation of the Magistrate Judge. (Docket No. 11.) The Report-Recommendation was approved, and the petition was dismissed by Decision and Order filed August 21, 2007. (Docket No. 15.) Wright has appealed the dismissal to the Second Circuit and now seeks a Certificate of Appealability ("COA"). (Docket No. 21.)

28 U.S.C. § 2253(c)(1) provides in relevant part that:

Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from –
(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or
(B) the final order in a proceeding under section 2255.¹

A COA may be issued “if the applicant has made a substantial showing of the denial of a constitutional right.” See 28 U.S.C. § 2253(c)(2). The petitioner has made a substantial showing of a denial of a constitutional right with respect to Claims 1 and 2 of his Petition.

THEREFORE, it is

ORDERED, that

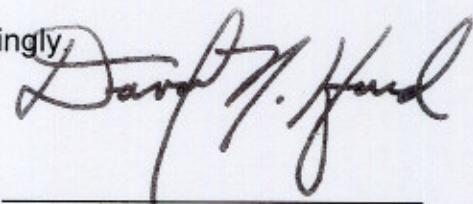
1. Petitioner's application for a Certificate of Appealability (Docket No. 21) is

GRANTED; and

2. A Certificate of Appealability is issued with respect to Claims 1 and 2 in the petition for a writ of habeas corpus.

The Clerk is directed to enter judgment accordingly.

IT IS SO ORDERED.



United States District Judge

Dated: December 14, 2007
Utica, New York.

¹ Rule 22 of the Federal Rules of Appellate Procedure also provides that an appeal may not proceed “unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c).” See Fed. R. App. P. 22(b).